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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL LAMAR VANDERWOOD, Defendant and Appellant.	D074896 (Super. Ct. No. RIF1403467)

APPEAL from a judgment of the Superior Court of Riverside County, Irma Poole Asberry, Judge. Affirmed.

Law Offices of E. Thomas Dunn, Jr., and E. Thomas Dunn, Jr., for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Alana Cohen Butler, Deputy Attorneys General, for Plaintiff and Respondent.

An argument between Michael Lamar Vanderwood and his wife, Jane Doe, escalated into an assault that Jane recorded on her smartphone. A jury found

Vanderwood guilty of torture (Pen. Code,[1] § 206), inflicting corporal injury on a spouse (§ 273.5, subd. (a)), and making criminal threats (§ 422). The jury also found true, under the corporal injury count, that Vanderwood had personally inflicted great bodily injury on Doe (§§ 12022.7, subd. (e), 1192.7, subd. (c)(8)). The trial court sentenced him to a determinate term of two years in prison, followed by an indeterminate term of seven years to life in prison.

In his opening brief, Vanderwood challenges his torture conviction, arguing: (1) it is not supported by sufficient evidence, (2) the torture instruction was inadequate, and (3) adding the torture charge before the preliminary hearing amounted to vindictive prosecution. For the first time in his reply brief, Vanderwood argues that should we uphold his torture conviction, his consecutive two-year sentence for criminal threats should be stayed under section 654. We affirm the judgment.

FACTUAL BACKGROUND

Vanderwood, a psychology professor, married Doe in 2004. At times, Vanderwood emotionally abused Doe, ridiculing her, calling her names, telling her that she was fat and needed to go to the gym. He told her that he could be better at her job than she was, he was smarter, and she was trailer trash. When Doe stood up for herself, he tried to convince her that she was crazy.

By 2013 the couple constantly argued and swore at each other. Vanderwood often did not speak to Doe for days until she apologized. In May 2013 an argument turned physical when Vanderwood angrily bent Doe's arm behind her back, pushed her on the

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1 Undesignated statutory references are to the Penal Code.

bed and lay on top of her with her arm still behind her back. Doe cried, telling him it hurt and to let her go. Vanderwood finally stopped after Doe apologized to him. After the incident, Doe took photographs of bruises on her arm.

In February 2014 Doe retreated to her bedroom after another fight. Vanderwood followed her, asking if she was done arguing and ready to apologize—calling her a "bitch" when she refused to say she was sorry. He then told her in a consoling way that she was crazy, tried to kiss her and rub her back. When Doe rejected his advances Vanderwood got angry, telling her that she was crazy and stormed out the door. Vanderwood returned as she packed a suitcase. He grabbed her upper arms, telling her that she "wasn't going to go anywhere, who did [she] think [she] was." As Doe pounded her fists on his chest and yelled at him to let her go, Vanderwood slid his hands down to her wrists, twisting them outward until she heard her wrists pop and felt "excruciating" pain.

For the first time, Doe fought back by biting Vanderwood's chest. Vanderwood then threw her toward a dresser, where she hit her head leaving "a lump and a bloody cut on the right side of [her] forehead." Doe left for that night, but did not call the police because she believed a similar incident would not happen again. She photographed her injuries.

The couple's relationship deteriorated, they spent little time together and had heated arguments. Vanderwood also starting drinking more. After an argument on August 23, 2014, Doe pressed a recording feature on her smartphone when she heard Vanderwood climbing the stairs. The 22-minute recording of the incident leading to the

instant charges was played for the jury. During pauses in the playback Doe described what was happening at the time. While holding Doe down, Vanderwood punched her in the face and repeatedly strangled her. Four times Vanderwood told Doe that he would kill her or break her bones. About 18 minutes into the incident Doe tried to stop the attack by "agreeing and submitting to anything that he said . . . thinking what kind of things can I do to keep myself alive, to have him stop doing this, between telling him I loved him, negotiating, looking me in the eye. I kept thinking the whole time what can I do to make this stop and keep me alive." Doe ultimately escaped, called a friend to pick her up where she hid outside the house, and contacted the police.

After the attack Doe had bruises and swelling on her face and throat, and two of her front teeth were loosened. She had surgery on her nose for a deviated septum, suffered from headaches for a year after the incident and might need braces to realign her jaw.

DISCUSSION

I. *SUFFICIENT EVIDENCE SUPPORTED THE TORTURE CONVICTION*

A. *Legal Principles*

The crime of torture is defined as follows: "Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture. [¶] The crime of torture does not require any proof that the victim suffered pain." (§ 206.) "Torture has two elements: (1) the infliction of great bodily injury; and (2) the specific intent to cause cruel or extreme

pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose." (*People v. Massie* (2006) 142 Cal.App.4th 365, 370-371 (*Massie*).) "[R]evenge, extortion, and persuasion are self-explanatory. Sadistic purpose encompasses the common meaning, ' "the infliction of pain on another person for the purpose of experiencing pleasure." ' " (*Id.* at p. 371.) The length of time over which the offense occurred and the severity of any wounds are relevant, but not necessarily determinative. (*Ibid.*) Great bodily injury does not require permanent, disabling, or disfiguring injuries; abrasions, lacerations, and bruising may suffice. (*People v. Odom* (2016) 244 Cal.App.4th 237, 247 (*Odom*).) " '[C]ruel pain' is the equivalent to 'extreme' or 'severe' pain." (*People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1202.)

"The intent with which a person acts is rarely susceptible of direct proof and usually must be inferred from facts and circumstances surrounding the offense. [Citations.] In reviewing a jury's determination, we view the whole record in a light most favorable to the verdict, drawing all reasonable inferences and resolving all conflicts in support of the jury's verdict. [Citation.] We must uphold the verdict unless it clearly appears that upon no hypothesis whatever is there sufficient evidence to support it." (*Massie*, *supra*, 142 Cal.App.4th at p. 371.) In reviewing a claim of insufficiency of the evidence, comparison with other cases is of limited utility, since each case necessarily depends on its own facts. (*Odom*, *supra*, 244 Cal.App.4th at p. 248.)

B. *Analysis*

Vanderwood asserts that sufficient evidence does not support the jury's finding that at the time he inflicted injuries upon Doe, he specifically intended to cause her cruel

or extreme pain or suffering. Rather, he claims the evidence shows an intent to "overcome Doe's resistance." Specifically, he points to his repeated statements that Doe "stop," claiming his remarks showed his increasing rage.

He also cites the facts of other cases in which the evidence was found sufficient to prove the defendant harbored the intent requisite for a torture conviction, claiming these facts are very different from those of this case. Vanderwood argues that, similar to *People v. Steger* (1976) 16 Cal.3d 539 (*Steger*), his conduct toward Doe during the incident was " 'an irrational and unjustifiable attempt' to control her feelings and demeanor towards him (just as it was in *Steger*), but the specific, overriding purpose of his conduct was not to cause her extreme pain and suffering, *even though pain and suffering resulted from that conduct*."

Preliminarily, we agree with numerous other courts holding that facts of other cases are of little benefit in assessing the sufficiency of the evidence in a particular torture case. (See, e.g., *Odom*, *supra*, 244 Cal.App.4th at p. 248; *People v. Baker* (2002) 98 Cal.App.4th 1217, 1224-1225 [rejecting argument that "the cases in which torture convictions have been affirmed involve[d] evidence demonstrating 'uniquely vicious behavior' or evilness' not present" in the defendant's case]; *People v. Hale* (1999) 75 Cal.App.4th 94, 107 (*Hale*) [rejecting argument that the evidence was insufficient because the defendant's "acts were not so egregious" as those in other torture cases].) Thus, our analysis does not consider whether other cases may have involved more shocking acts of torture.

Vanderwood does not challenge the jury's finding that he inflicted great bodily injury on Doe. Rather, he challenges the sufficiency of the evidence supporting the second element, that he specifically intended to cause Doe cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose. Contrary to Vanderwood's claim, the evidence permitted a reasonable jury to conclude that he beat and strangled Doe intending to cause her cruel or extreme pain and suffering.

For about the first 15 minutes of the attack Vanderwood pinned Doe down so that she could not move. During this time he slapped her face, punched her face multiple times, bent two of her fingers backwards, and strangled her multiple times. At trial Doe described what she thought and felt during the multiple times Vanderwood strangled her:

> "I had so much saliva in my mouth, I literally thought I was going to drown from it."
>
> "Oh my gosh. I was so scared, I literally thought I was going to die in there."
>
> "My vision was blurry. A couple of times I felt my eyes start to roll. I thought—I actually at one point thought I'm going to die and what's he going to do with my body."
>
> "I was dizzy. I, again, that was one of the times that I felt my eyes kind of rolling back, getting blurry. I was thinking that's it, I'm going to die right here. Things flashed in front of my face. I was in shock. My lungs and chest hurt, because every time I took a breath in, I had no space to exhale. I couldn't exhale."

At one point, Vanderwood strangled Doe with his left hand while plugging her nose with his right hand. She stated this made it even harder for her to breathe "[b]ecause I couldn't get even a little air through my nose. I wasn't getting much anyway because of all the congestion from crying, and then I had no air coming through my throat or my

mouth. And he was sitting on top of me, and so my lungs were more collapsed than they would be."

A strangulation expert listened to the recording of the incident and heard Doe gurgling as she struggled to breathe. He explained that a person's esophagus can be blocked while being strangled. This prevents the person from swallowing and causes saliva to pool in the back of the throat, "that's where you gurgle and you feel like you're going to drown because you're having trouble breathing." He explained that persons being strangled can still yell out that they "can't breathe" when the trachea is only partially collapsed. However, because the airflow is significantly reduced, "you feel like you can't breathe. But there is still a little bit of air that goes through that you can phonate and speak but it's not the normal amount of air. So it's that feeling that I can't breathe; I'm going to die."

About 15 minutes into the attack Doe rolled onto her stomach and rose to her knees. When Vanderwood could not get her back down, he kicked her in the ribs and off the bed. Vanderwood told her to leave. Vanderwood again strangled Doe with both hands while she was in the closet to get some pants. He then threw her toward the bed and pushed her back on the bed when she stood up. He pushed her face into a pillow and put her in a chokehold where she could barely breathe. At this point, Doe started to say anything that Vanderwood wanted. Vanderwood still had her pinned to the bed so that she could not move. Doe rolled out from under him, grabbed her smartphone, and ultimately escaped.

During the attack, Vanderwood told Doe, "I'm gonna fuckin' hurt you." Vanderwood also threatened to kill her multiple times, to "beat the shit" out of her, and break "some shit" or her bones. He repeatedly told Doe he did not care or did not "give a shit" that he was hurting her or that she could not breathe. These statements are compelling evidence from which the jury could reasonably conclude that Vanderwood deliberately caused Doe pain and suffering.

Vanderwood contends that the evidence does not support the inference that he hurt Doe as a means of persuasion, revenge or for a sadistic purpose. During closing argument, the prosecutor argued that the evidence supported all of the three alternative factors. We agree.

Before the attack Vanderwood apologized to Doe and tried to coax her to kiss him and come to him. After Doe pleaded with him to leave her alone, he told her to stop fighting him. Vanderwood choked Doe after repeatedly telling her to "stop it." Vanderwood told Doe to "stop it" nine times before launching into a lengthy discourse attempting to persuade Doe to submit to him by stopping what she was doing and "put her arms around [him] and love [him]." Vanderwood told Doe four times to put her arms around him until he finally gave up, stating "Stop. Oh my God. You know what? Fuck you." Finally, about 18 minutes into the attack, Doe submitted to "anything [Vanderwood] said" to stop the attack:

"DEFENDANT: You stop?

"VICTIM: Yes.

"DEFENDANT: Are you done?

"VICTIM: Yes.

"DEFENDANT: You gonna fuck with me anymore?

"VICTIM: No.

"DEFENDANT: You promise?

"VICTIM: Yes—yes.

"DEFENDANT: Don't fuck with me anymore.

"VICTIM: I won't."

Shortly after Doe's submission and just before her escape, Vanderwood told her: "Your fucking bullshit is done. Either you fuckin list[e]n to me or we're divorced. You can choose. Walk out the door—be divorced or you fuckin' start listening to me. Who the fuck do you think you are? Who do you think you are?" The jury could reasonably conclude, from Vanderwood's own statements, that he intended to inflict pain and suffering on Doe to control her behavior and submit to his demands. Inflicting pain "to control another's behavior" can constitute torture. (*People v. Healy* (1993) 14 Cal.App.4th 1137, 1141.)

The evidence also supports the inference that Vanderwood inflicted pain on Doe for revenge. He told Doe that she "deserve[d] to have the shit beat out of [her]." After complaining about Doe's "bullshit" and telling her that he was "not gonna put up with this shit anymore," Vanderwood made it clear that he intended to hurt her as revenge for swearing at him. He repeatedly complained about Doe "cussing" at him and told her that she "need[ed] to be taught a fuckin' lesson" and that he didn't "give a shit" that he was

hurting her. During this tirade about Doe's cursing, Doe stated "I promise" four times. Despite these promises and Doe's complaint that "[y]ou're really hurting me" and her plea for him to stop, Vanderwood stated:

> "DEFENDANT: No, fifteen fuckin' years of dealing with this shit. Who the fuck do you think you are?
>
> "VICTIM: Owie.
>
> "DEFENDANT: I don't give a fuckin' shit right now. You have been treatin' me like shit for fifteen fuckin' years."

From these statements the jury could have concluded that Vanderwood attacked Doe for revenge. (*Hale*, *supra*, 75 Cal.App.4th at pp. 106-107 [stating "that's what you get" or "you're going to get it" between blows suggested intent to cause pain for revenge].)

Finally, the evidence also supports the inference that Vanderwood hurt Doe for a sadistic purpose. The trial court instructed the jury that a person "acts with a sadistic purpose if he or she intends to inflict pain on someone else in order to experience pleasure himself or herself." (CALCRIM No. 810.) Doe testified that in response to her complaint about being unable to breathe when Vanderwood sat on her, choking her with one hand and plugging her nose with the other, that Vanderwood appeared to enjoy himself because he said " 'breathe out your mouth.' And he seemed to say it in a very nonchalant way of just breathe through your mouth." Later in the attack, after Doe screamed that he was "really hurting her" Vanderwood replied, "I don't care," and then put her in a chokehold as he threatened to kill her.

After reviewing the entire record in this case, we conclude substantial evidence supports the jury's finding that Vanderwood intended to cause Doe cruel or extreme pain and suffering for the purpose of revenge, persuasion, or a sadistic purpose. Although defense counsel argued during closing that the recording of the incident failed to show that Vanderwood acted for the purpose of revenge, persuasion or sadism, the jury reasonably rejected this alternative inference.[2]

II. *ADEQUACY OF TORTURE INSTRUCTION*

Vanderwood argues that the evidence supported giving a pinpoint instruction telling jurors to consider the effect of his rage and the circumstances of the altercation in determining whether he possessed the specific intent to torture Doe when he injured her. He claims that the court should have sua sponte instructed the jury on the potential impact of his rage. Alternatively, he claims that he received ineffective assistance by defense counsel's failure to request such pinpoint instruction.

In criminal cases, the trial court has a sua sponte duty to instruct the jury on all general principles of law relevant to the issues raised by the evidence. (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) We independently review the correctness and adequacy of the trial court's instructions, examining whether the court " 'fully and fairly instructed on the applicable law.' " (*People v. Ramos* (2008) 163 Cal.App.4th 1082,

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[2] Vanderwood's reliance on *Steger, supra*, 16 Cal.3d 539 is misplaced because it involved a different crime, murder under section 189, which requires "a willful, deliberate, and premeditated intent to inflict extreme and prolonged pain." (*Id.* at p. 546; see § 189.) *Steger* did not address section 206 and said nothing about the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion or persuasion.

1088.) Although a trial court has a duty to adequately instruct on the law, "it has no duty to give clarifying or amplifying instructions absent a request." (*People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1331.) Pinpoint instructions—instructions that relate particular facts to a legal issue in the case—are required to be given on request if there is evidence to support the theory. (*People v. Nelson* (2016) 1 Cal.5th 513, 542.) Here, defense counsel's failure to request a pinpoint instruction regarding Vanderwood's rage forfeited his claim of error on appeal. (*People v. Jennings* (2010) 50 Cal.4th 616, 675.) Accordingly, we analyze this assertion of error under his alternative theory that he received ineffective assistance of counsel.

A defendant seeking reversal for ineffective assistance of counsel must prove both deficient performance and prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) To demonstrate prejudice, defendant must show a reasonable probability that he would have received a more favorable result had counsel's performance not been deficient. (*Id.* at pp. 694-695.) "A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Id.* at p. 694.) "The likelihood of a different result must be substantial, not just conceivable." (*Harrington v. Richter* (2011) 562 U.S. 86, 112.)

"On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding." (*People v.*

Mai (2013) 57 Cal.4th 986, 1009.) Where, as here, counsel's trial tactics "for challenged decisions do not appear on the record, we will not find ineffective assistance of counsel on appeal unless there could be no conceivable reason for counsel's acts or omissions." (*People v. Weaver* (2001) 26 Cal.4th 876, 926.) Vanderwood has not shown that there could be no conceivable reason for defense counsel's actions.

First, as Vanderwood impliedly conceded, the general torture instruction that defense counsel agreed to correctly stated the law. Additionally, the trial court instructed the jurors that in determining whether the People had proven their case beyond a reasonable doubt they were to "consider all the evidence that was received throughout the entire trial." (CALCRIM Nos. 103, 220.) Nothing in the instructions suggested that Vanderwood's rage could not be considered in evaluating whether he harbored the requisite intent.

"[H]ow a general instruction applies to specific evidence or theories is an argument for counsel to make." (*People v. Landry* (2016) 2 Cal.5th 52, 100.) Here, it appears that defense counsel reasonably decided to address Vanderwood's rage during closing argument, by arguing that the recording of the incident shows that Vanderwood was angry and that he always spoke in "a very angry, vitriolic rant." Alternatively, defense counsel could have concluded that a pinpoint instruction regarding Vanderwood's rage would have been harmful to his defense because "[a]n explosion of anger . . . is not at all inconsistent with an intent to inflict cruel or extreme pain and suffering, which may be the result of 'mere unconsidered or rash impulse hastily executed.' " (*Massie, supra,* 142 Cal.App.4th at p. 372.)

Even assuming the jury had been instructed as Vanderwood suggests we are not persuaded that there is a reasonable probability of a different result. Extreme anger is not inconsistent with the required mental state for torture and the evidence amply supported the jury's conclusion that Vanderwood acted for the purpose of revenge, persuasion or sadism. (*Ante*, pt. I.)

III. *RETALIATORY PROSECUTION*

The initial felony complaint against Vanderwood was filed approximately one month after the incident. About six months after this initial filing, the Riverside District Attorney amended the complaint to add a torture charge. Vanderwood claims that the prosecutor did so after negotiations failed to produce a guilty plea, that this new charge did not fit the facts and "had no purpose other than to ensure a trial that, if resulting in a guilty verdict, would punish [him] for refusing to enter into a negotiated plea."[3] Should we determine that he forfeited this argument by failing to raise it in the trial court, Vanderwood alternatively argues defense counsel was ineffective because "counsel should have known that torture was not an apposite charge."

A claim of vindictive prosecution is waived if not raised in the trial court. (*People v. Edwards* (1991) 54 Cal.3d 787, 827.) Nonetheless, because Vanderwood claims that defense counsel's failure to raise this issue denied him effective assistance of counsel, we decline to resolve this issue on procedural grounds and address it on the merits.

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3 This argument is undercut by defense counsel's representation at the preliminary hearing that Vanderwood was unwilling to plead guilty to *any* felony out of fear that he would lose his job.

It is " 'patently unconstitutional' " and a basic violation of due process to punish defendants for exercising a right that the law plainly accords them. (*Bordenkircher v. Hayes* (1978) 434 U.S. 357, 363.) Thus, in certain cases in which defendants face a risk of greater punishment apparently as a result of their exercise of rights, the United States Supreme Court has found it necessary to "presume" an improper vindictive motive (*United States v. Goodwin* (1982) 457 U.S. 368, 373 (*Goodwin*)), thereby placing a " 'heavy burden' " on the prosecution to dispel the appearance of vindictiveness as well as actual vindictiveness. (*Twiggs v. Superior Court* (1983) 34 Cal.3d 360, 371.)

The United States Supreme Court and the California Supreme Court have concluded that the presumption of vindictive prosecution is unwarranted in a pretrial setting. (*Goodwin*, *supra*, 457 U.S. at pp. 381-383 [deciding not to plead guilty and requesting a jury is insufficient to warrant a presumption that subsequent changes in the charging decision are unjustified]; *People v. Grimes* (2016) 1 Cal.5th 698, 736 (*Grimes*) [same].) The *Goodwin* court stated: "There is good reason to be cautious before adopting an inflexible presumption of prosecutorial vindictiveness in a pretrial setting. In the course of preparing a case for trial, the prosecutor may uncover additional information that suggests a basis for further prosecution or he simply may come to realize that information possessed by the State has a broader significance. At this stage of the proceedings, the prosecutor's assessment of the proper extent of prosecution may not have crystallized." (*Goodwin*, at p. 381.) "To presume that every case is complete at the time an initial charge is filed, however, is to presume that every prosecutor is infallible—

an assumption that would ignore the practical restraints imposed by often limited prosecutorial resources." (*Id.* at p. 382, fn. 14.)

Thus, " '[i]n the pretrial setting, there is no presumption of vindictiveness when the prosecution increases the charges or . . . the potential penalty. [Citations.] Rather, the defendant must "prove objectively that the prosecutor's charging decision was motivated by a desire to punish him for doing something the law plainly allowed him to do." ' " (*Grimes*, *supra*, 1 Cal.5th at p. 736.) Because Vanderwood is challenging the prosecutor's pretrial action to amend the felony complaint, no presumption of vindictiveness is present, and he has the burden to provide evidence of vindictive prosecution. Vanderwood has not cited any evidence in the record that vindictiveness motivated the prosecutor to add the torture charge. Accordingly, his claim of vindictive prosecution fails. In any event, as discussed *ante*, in part I, the evidence warranted the torture charge. Thus, Vanderwood's claim that the prosecution "deputies should have known the charge added did not fit the facts of the case" is untenable.

IV. *ALLEGED VIOLATION OF SECTION 654*

The trial court stayed Vanderwood's sentence for inflicting corporal injury on a spouse under section 654 because this crime included the same criminal acts as the torture charge. Defense counsel also argued that Vanderwood's criminal threats sentence should be stayed under section 654 because the prosecutor used Vanderwood's threats to prove the torture charge. The trial court rejected this argument finding that section 654 did not apply to the criminal threats count because the criminal threats and torture offenses were distinct.

In his reply brief, Vanderwood argues that if we uphold his torture conviction, his consecutive two-year sentence for criminal threats must be stayed under section 654. He contends this error resulted in an unauthorized sentence, an error that can be raised anytime. "Errors in the applicability of section 654 are corrected on appeal regardless of whether the point was raised by objection in the trial court or assigned as error on appeal." (*People v. Perez* (1979) 23 Cal.3d 545, 549-550, fn. 3.) Accordingly, we requested and received supplemental briefing from the Attorney General on this issue.

Section 654 prohibits punishment for two or more offenses arising from the same act or from a series of acts constituting an indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1216).[4] " 'Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all the offenses were incident to one objective, the defendant may be punished for any one of the offenses but not more than one.' " (*People v. Correa* (2012) 54 Cal.4th 331, 336.) Section 654 is intended to ensure that the defendant is punished commensurate with his or her culpability. (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) The defendant's intent and objective, not the temporal proximity of his or her offenses, determines whether multiple punishment is permissible. (*Ibid.*)

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4 Section 654, subdivision (a), provides: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other."

" 'Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.] We review the trial court's determination in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence.' " (*People v. Ortiz* (2012) 208 Cal.App.4th 1354, 1378.)

In *People v. Mejia* (2017) 9 Cal.App.5th 1036 (*Mejia*), the defendant was convicted of spousal rape, infliction of corporal injury on a spouse, criminal threats, and torture. (*Id*. at p. 1039.) In determining whether section 654 applied to the torture and criminal threats counts the *Mejia* court noted that torture required the specific intent to inflict cruel or extreme physical pain or suffering and that "mentally or emotionally terrorizing the victim by means of threats is an objective separate from the intent to cause extreme physical pain." (*Id.* at pp. 1046-1047.)

The reasoning of *Mejia*, *supra*, 9 Cal.App.5th 1036 applies here. Vanderwood could have caused Doe cruel or extreme physical pain and suffering without threatening to kill her. Doe testified that Vanderwood's threats to "kill" concerned her because "everything else that he had said he was going to do, he did or tried to do." The trial court could have reasonably concluded that Vanderwood's objective in threatening to kill Doe was to place her in sustained fear for her life. Thus, even though Vanderwood's verbal threats and physical acts were otherwise parts of an indivisible course of conduct, the trial court properly imposed both sentences to punish Vanderwood commensurate with his increased culpability.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

AARON, J.